

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES R. PRINCE, : CIVIL ACTION
Petitioner/Appellant, :
-v- :
KENNETH D. KYLER, et al., :
Respondent/Appellee. : (Judge Kane)
(Magistrate Judge Blewitt)

CIVIL ACTION

NO. 1:CV-00-1181

(Judge Kane)

(Magistrate Judge Blewitt)

FILED
HARRISBURG

AUG 29 2002

MARY E. D'ANDREA, CLERK
Per DB
DEPUTY CLERK

**MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS
AND ACCOMPANYING AFFIDAVIT IN SUPPORT**

Petitioner, James R. Prince, pursuant to 18 U.S.C. §1746,
verifies the following as true and correct:

1. By Order filed July 5, 2000, United States Magistrate
Judge Thomas M. Blewitt GRANTED Petitioner leave to proceed in
forma pauperis. Copy appended hereto as Exhibit A.

2. There has been no substantial change in Petitioner's
financial condition.

3. The Petitioner is unable to pay the costs and fees on
appeal, based on the accompanying affidavit in support.

Date: Aug 26th 02

James R. Prince
James R. Prince
#BD-1801
SCI-Huntingdon
1100 Pike Street
Huntingdon, PA 16654-1112

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES R. PRINCE,

Petitioner

v.

KENNETH D. KYLER, et al.,

Respondents

CIVIL ACTION NO. 1:CV-00-1181

(Judge Kane)

(Magistrate Judge Blewitt)

FILED
SCRANTON

JUL 5 2000

PER

DEPUTY CLERK

ORDER

AND NOW, this th 5 day of July, 2000, IT IS HEREBY ORDERED THAT:

1. Petitioner's application for leave to proceed in forma pauperis (Doc. 2) is GRANTED.
2. The Clerk is directed forthwith to serve a copy of the petition (Doc. 1), together with this Order, by certified mail on the Attorney General of the Commonwealth of Pennsylvania and the District Attorney of Lycoming County..
3. Respondents, within twenty (20) days of the date of this Order, shall respond to the petition for writ of habeas corpus in the manner required by Rule 5, 28 U.S.C.A. foll. § 2254:

The answer shall respond to the allegations of the petition. In addition it shall state whether the petitioner has exhausted his state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the state and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceeding. The answer shall indicate what transcripts (of pretrial, trial, sentencing, and

Exhibit A

**Affidavit accompanying Motion for
Permission to Appeal In Forma Pauperis**

United States District Court for the Middle of Pennsylvania

JAMES R, PRINCE, Petitioner/Appellant,

v.

D.C. Case No. 1:CV-00-1181

**KENNETH D. KYLER, et al.,
Respondent/Appellee**

Third Cir. No. _____

Affidavit In Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury that my answers on this form are true and correct. (28 U.S.C. § 1746, 18 U.S.C. § 1621)

Signed: James R Prince

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks. If the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate piece of paper identified with your name, your case's docket number, and the question number.

Date: Aug 15th '02

My issues on Appeal are:

1. The District Court's August 1, 2002 Memorandum Order fails to set forth any reasons as to why a Certificate of Appealability should be denied.
2. The District Court erred by not granting Appellant's Motion to expand the Record to include records from the state court that would show factors external to the defense was the cause of an alleged procedural default.
3. The Appellant has made a substantial showing of the denial of his constitutional rights to warrant habeas corpus relief.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

INCOME SOURCE	AVERAGE MONTHLY AMOUNT DURING THE PAST 12 MONTHS	AMOUNT EXPECTED NEXT MONTH
	You	You
Employment	\$ 0	\$ 0
Self-Employment	\$ 0	\$ 0
Income from real property (such as rental income)	\$ 0	\$ 0
Interest and Dividends	\$ 0	\$ 0
Gifts	\$ 10.00	\$ 10.00
Alimony	\$ 0	\$ 0
Child Support	\$ 0	\$ 0
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ 0
Unemployment payments	\$ 0	\$ 0
Disability (such as social security, insurance payments)	\$ 0	\$ 0
Public Assistance (such as welfare)	\$ 0	\$ 0
Other (specify): Prison Inmate Pay	\$ 25.00	\$ 30.00
Total monthly income¹	\$ 35.00	\$ 40.00

1. Above stated amounts represent money received solely by the Appellant. Appellant is legally separated from his spouse. No joint financial relationship exists between Appellant and his spouse.

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.

Employer	Address	Dates of Employment	Gross Monthly Pay
<u>Appellant has been continuously incarcerated since 1989.</u>			
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.

Employer	Address	Dates of Employment	Gross Monthly Pay
<u>Appellant is legally separated from his spouse, and enjoys no financial relationship.</u>			
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? \$ 0

Below, state any money you or spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
<u>None.</u>	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement for each account.

See attached statement.

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or Home Mortgage (Include lot rented for mobile home)	\$ 0	\$ 0
Are real estate taxes included? <input type="checkbox"/> yes <input type="checkbox"/> no		
Is property insurance included? <input type="checkbox"/> yes <input type="checkbox"/> no		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 0	\$ 0
Home maintenance (repairs and upkeep)	\$ 0	\$ 0
Food	\$ 20.00	\$ 0
Clothing	\$ 0	\$ 0
Laundry and dry-cleaning	\$ 0	\$ 0
Medical and dental expenses	\$ 2.00	\$ 0
Transportation (not including motor vehicle payments)	\$ 0	\$ 0
Recreation, entertainment, newspapers, magazines, etc.	\$ 15.00	\$ 0
Insurance (not deducted from wages or included in mortgage payments)	\$ 0	\$ 0
Homeowners or renters	\$ 0	\$ 0
Life	\$ 0	\$ 0
Health	\$ 0	\$ 0
Motor Vehicle	\$ 0	\$ 0
Other: _____	\$ 0	\$ 0
Taxes (not deducted from wages or included in mortgage payments)(specify): _____	\$ 0	\$ 0

PA DEPT. OF CORRECTIONS
BUREAU OF COMPUTER SERVICES
REMOTE PRINT TIME 8:49

INMATE ACCOUNTS SYSTEM
PARTIAL ACCOUNT LISTING
FROM PURGE FILE

RUN IAS365
DATE 8/20/2002
PAGE 1

INMATE NAME
NUMBER LAST
BD1801 PRINCE

FIRST
JAMES

MI

STARTING BALANCE
25.05

BATCH #	DATE MO DY YEAR	TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
8002	01-02-2002	32 HUN COMMISSARY FOR 1/02/2002	-19.24	5.81
5400	01-07-2002	38 INSIDE PURCHASES SHOE SHOP - JANUARY 4, 2002	-.50	5.31
5410	01-08-2002	37 POSTAGE JANUARY 7, 2002	-.80	4.51
8008	01-08-2002	32 HUN COMMISSARY FOR 1/08/2002	-5.13	-.62
5436	01-10-2002	10 MAINTENANCE PAYROLL DECEMBER 2001	29.85	29.23
5461	01-14-2002	38 INSIDE PURCHASES SHOE SHOP - JAN. 11, 2002	-.75	28.48
5463	01-14-2002	37 POSTAGE JANAURY 13, 2002	-.80	27.68
8015	01-15-2002	32 HUN COMMISSARY FOR 1/15/2002	-6.36	21.32
8022	01-22-2002	32 HUN COMMISSARY FOR 1/22/2002	-2.71	18.61
8029	01-29-2002	32 HUN COMMISSARY FOR 1/29/2002	-1.58	17.03
8032	02-01-2002	34 HUN CABLE TV FOR 2/01/2002	-15.25	1.78
8036	02-05-2002	32 HUN COMMISSARY FOR 2/05/2002	-1.58	.20
5610	02-08-2002	13 PERSONAL GIFT FROM PRINCE, RONA (355999)	100.00	100.20
8043	02-12-2002	32 HUN COMMISSARY FOR 2/12/2002	-27.28	72.92
5635	02-12-2002	37 POSTAGE FEBRUARY 12, 2002	-.80	72.12
5645	02-14-2002	10 MAINTENANCE PAYROLL JANUARY 2002	30.18	102.30
8057	02-26-2002	32 HUN COMMISSARY FOR 2/26/2002	-25.26	77.04
5735	02-27-2002	13 PERSONAL GIFT FROM PRINCE, RONA (F509218)	60.00	137.04
8060	03-01-2002	34 HUN CABLE TV FOR 3/01/2002	-15.25	121.79
5751	03-04-2002	38 INSIDE PURCHASES SHOE SHOP - MARCH 1, 2002	-.50	121.29
5756	03-04-2002	31 OUTSIDE PURCHASES UNION SUPPLY COMPANY	-108.74	12.55
8064	03-05-2002	32 HUN COMMISSARY FOR 3/05/2002	-5.79	6.76

PA DEPT. OF CORRECTIONS
BUREAU OF COMPUTER SERVICES
REMOTE PRINT TIME 8:49

INMATE ACCOUNTS SYSTEM
PARTIAL ACCOUNT LISTING
FROM PURGE FILE

RUN IAS365
DATE 8/20/2002
PAGE 2

INMATE NUMBER	NAME LAST	FIRST	MI
BD1801	PRINCE	JAMES	

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
8071	03-12-2002	32	HUN COMMISSARY FOR 3/12/2002	-6.72	.04
5821	03-14-2002	10	MAINTENANCE PAYROLL FEBRUARY 2002	30.35	30.39
5853	03-20-2002	37	POSTAGE MARCH 19, 2002	-.80	29.59
8085	03-26-2002	32	HUN COMMISSARY FOR 3/27/2002	-8.92	20.67
BALANCE AFTER THESE TRANSACTIONS----->					20.67

PA DEPT. OF CORRECTIONS
BUREAU OF COMPUTER SERVICES
REMOTE PRINT TIME 8:49

INMATE ACCOUNTS SYSTEM
PARTIAL ACCOUNT LISTING
FROM PURGE FILE

RUN IAS365
DATE 8/20/2002
PAGE 1

INMATE		NAME				STARTING BALANCE
NUMBER	LAST	FIRST	MI			
BD1801	PRINCE	JAMES				20.67

BATCH #	DATE MO DY YEAR	TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
8091	04-01-2002 34	HUN CABLE TV FOR 4/01/2002	-15.25	5.42
8092	04-02-2002 32	HUN COMMISSARY FOR 4/02/2002	-2.93	2.49
5956	04-05-2002 10	MAINTENANCE PAYROLL PAYROLL ADJUSTMENT	1.20	3.69
8099	04-09-2002 32	HUN COMMISSARY FOR 4/09/2002	-2.88	.81
5991	04-11-2002 10	MAINTENANCE PAYROLL MARCH 2002	33.08	33.89
6028	04-16-2002 13	PERSONAL GIFT FROM PRINCE, RONA (F435319)	20.00	53.89
8106	04-16-2002 32	HUN COMMISSARY FOR 4/17/2002	-18.43	35.46
6042	04-18-2002 37	POSTAGE APRIL 18, 2002	-.57	34.89
6061	04-22-2002 37	POSTAGE APRIL 21, 2002	-.80	34.09
6075	04-23-2002 38	INSIDE PURCHASES SHOE SHOP - APRIL 22, 2002	-1.00	33.09
8113	04-23-2002 32	HUN COMMISSARY FOR 4/23/2002	-10.08	23.01
6120	04-29-2002 37	POSTAGE APRIL 29, 2002	-1.94	21.07
8120	04-30-2002 32	HUN COMMISSARY FOR 4/30/2002	-4.22	16.85
8121	05-01-2002 34	HUN CABLE TV FOR 5/01/2002	-15.25	1.60
6227	05-17-2002 37	POSTAGE MAY 16, 2002	-.34	1.26
6224	05-17-2002 10	MAINTENANCE PAYROLL APRIL 2002	38.02	39.28
8141	05-21-2002 32	HUN COMMISSARY FOR 5/21/2002	-38.62	.66
6280	05-28-2002 14	MISCELLANEOUS UNION SUPPLY CO. (F357545)	6.00	6.66
8155	06-04-2002 32	HUN COMMISSARY FOR 6/04/2002	-6.51	.15
6363	06-14-2002 10	MAINTENANCE PAYROLL MAY 2002	36.31	36.46
8168	06-17-2002 32	HUN COMMISSARY FOR 6/17/2002	-36.23	.23
6413	06-24-2002 13	PERSONAL GIFT FROM PRINCE, RONA (F812529)	15.00	15.23

PA DEPT. OF CORRECTIONS
 BUREAU OF COMPUTER SERVICES
 REMOTE PRINT TIME 8:49

INMATE ACCOUNTS SYSTEM
 PARTIAL ACCOUNT LISTING
 FROM ACTIVE FILE

RUN IAS365
 DATE 8/20/2002
 PAGE 1

INMATE NAME
 NUMBER LAST
 BD1801 PRINCE

FIRST
 JAMES

MI

STARTING BALANCE
 3.72

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
8182	07-01-2002	32	HUN COMMISSARY FOR 7/01/2002	-3.72	.00
6514	07-12-2002	10	MAINTENANCE PAYROLL JUNE 2002	31.50	31.50
8196	07-15-2002	32	HUN COMMISSARY FOR 7/15/2002	-28.93	2.57
6639	08-02-2002	13	PERSONAL GIFT FROM PRINCE, R (811244)	35.00	37.57
8218	08-06-2002	32	HUN COMMISSARY FOR 8/06/2002	-33.67	3.90
6652	08-07-2002	38	INSIDE PURCHASES SHOE SHOP - AUGUST 5, 2002	-1.00	2.90
8225	08-13-2002	32	HUN COMMISSARY FOR 8/13/2002	-2.66	.24
6701	08-15-2002	10	MAINTENANCE PAYROLL JULY 2002	35.65	35.89
BALANCE AFTER THESE TRANSACTIONS----->					35.89

AFFIDAVIT OF MAILING

Pursuant to the penalties provided within 28 U.S.C. §1746,

I hereby certify that I hand-delivered the attached:

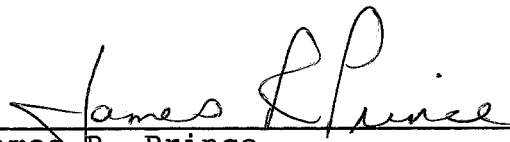
1. Notice of Appeal; and,
2. Motion for Permission to Appeal In Forma Pauperis
and Accompanying Affidavit in Support;

to prison officials at SCI-Huntingdon on this 26th day of
AUGUST, 2002, via first class U.S. prepaid postage, and
addressed to the following person(s) and in the manner indicated
below:

By Use of Institutional DC-138A Cash Slip:

Mary E. D'Andrea (ORIGINAL & ONE COPY)
Clerk
U.S. District Court (M.D. Pa.)
228 Walnut Street, P.O. Box 983
Harrisburg, PA 17108

Office of the District Attorney (For Respondent)
Lycoming County Courthouse
48 West 3rd Street
Williamsport, PA 17701


James R. Prince
BD-1801
SCI-Huntingdon
1100 Pike Street
Huntingdon, PA 16654-1112

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate	(Value)	Motor Vehicle # 1	(Value)
None.		None.		Make & year: None.	
				Model:	
				Registration # :	
Motor Vehicle # 2	(Value)	Other assets	(Value)	Other assets	(Value)
Make & year: None.		None.		None.	
Model:					
Registration # :					

6. State every person, business or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
None.		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
None.		